

Department of the Army, DoD

§536.113

this part. The provisions of these subparts on what claims are payable apply equally here. The members of the foreign force or civilian component must be acting in pursuance of the applicable treaty's objectives.

(b) Within the United States, third-party ex gratia claims are payable only by the sending State and are not payable under subpart E of this part.

§536.109 Claims not payable under international agreements (for those arising in the United States).

The following claims are not payable:

(a) Claims arising from a member of a foreign force or civilian component's acts or omissions that do not accord with the objectives of a treaty authorizing their presence in the United States.

(b) Claims arising from the acts or omissions of a member of a foreign force or civilian component who has been excluded from SOFA coverage by agreement between the sending State and the United States.

(c) Third-party scope claims arising within the United States that are not payable under subparts C, D, or H of this part are listed as barred under those subparts. As sending State forces are considered assimilated into the U.S. Armed Services for purposes of the SOFAs, their members are also barred from receiving compensation from the United States when they are injured incident to their service, *Daberkow v. United States*, 581 F.2d 785 (9th Cir. 1978).

§536.110 Notification of incidents arising under international agreements (for claims arising in the United States).

To enable USARCS to properly discharge its claims responsibilities under the applicable SOFAs, it must be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any member or employee of the U.S. armed services who learns of an incident involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. The JA or legal of-

ficer receiving such notification will in turn notify the Commander USARCS. If the member is neither assigned nor attached to any installation or activity within the United States, the Commander USARCS, will be notified.

§536.111 Investigation of claims arising under international agreements (for those claims arising in the United States).

Responsibility for investigating an incident rests upon the area claims office (ACO) or claims processing office (CPO) responsible for the geographic area in which the incident occurred. The Commander USARCS, an ACO, and a CPO are authorized to designate the legal office of the installation at which the member of the foreign force or civilian component is attached, including the legal office of another armed force, to carry out the responsibility to investigate. The investigation will comply with the responsible Service's implementing claims regulation. When the member is neither assigned nor attached within the United States, the Commander USARCS will furnish assistance.

§536.112 Settlement authority for claims arising under international agreements (for those claims arising in the United States).

Settlement authority is delegated to the Commander USARCS, except for settlement amounts exceeding the Commander's authority as set forth in subparts C, D, or H of this part, or in those cases where settlement is reserved to a higher authority. Pursuant to the applicable SOFA, the Commander USARCS will report the proposed settlement to the sending State office for concurrence or objection. See, for example, NATO SOFA, Article VIII.

§536.113 Assistance to foreign forces for claims arising under international agreements (as to claims arising in the United States).

As claims arising from activities of members of NATO, Partnership for Peace, Singaporean, or Australian forces in the United States are processed in the same manner as those arising from activities of U.S. government personnel. All JAs and legal offices will

provide assistance similar to that provided to U.S. armed services personnel.

§ 536.114 Scope for claims arising overseas under international agreements.

(a) This section sets forth guidance on claims arising from any act or omission of soldiers or members of the civilian component of the U.S. armed services done in the performance of official duty or arising from any other act or omission or occurrence for which the U.S. armed services are responsible under an international agreement. Claims incidents arising in countries for which the SOFA requires the receiving State to adjudicate and pay the claims in accordance with its laws and regulations are subject to partial reimbursement by the United States.

(b) Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under subpart J of this part. Claims arising from nonscope acts or omissions by third parties who are not foreign inhabitants are cognizable under subpart E but not under subparts C or F of this part.

§ 536.115 Claims procedures for claims arising overseas under international agreements.

(a) SOFA provisions that call for the receiving State to adjudicate claims have been held to be the exclusive remedy for claims against the United States, *Aaskov v. Aldridge*, 695 F. Supp. 595 (D.D.C. 1988); *Dancy v. Department of the Army*, 897 F. Supp. 612 (D.D.C. 1995).

(b) SOFA provisions that call for the receiving State to adjudicate claims against the United States usually refer to claims by third parties brought against members of the force or civilian component. This includes claims by tourists or business travelers as well as inhabitants of foreign countries. Depending on how the receiving State interprets the particular SOFA's class of proper claimants, the receiving State may also consider claims by U.S. soldiers, civilian employees, and their family members. Chiefs of command claims services or other Army JA offices responsible for claims that arise in countries bound by SOFA or other treaty provisions requiring a receiving

State to consider claims against the United States will ensure that all claims personnel know the receiving State's policy on which persons or classes of persons are proper claimants under such provisions. When a claim is filed both with the receiving State and under either the Military Claims Act (MCA) or Foreign Claims Act (FCA), the provisions of § 536.76(h) of this part and DA Pam 27-162, paragraph 3-4a apply.

(c) When SOFA provisions provide for receiving state claims consideration, the time limit for filing such claims may be much shorter than the two years otherwise allowed under the FCA or MCA. For example, receiving state claims offices in Germany require that a claim be filed under the SOFA within three months of the date that the claimant is aware of the U.S. involvement. If the filing period is about to expire for claims arising in Germany, have the claimant fill out a claim form, make two copies, and date-stamp each copy as received by the a sending State claims office. Return the date-stamped original of the claim to the claimant with instructions to promptly file with the receiving State claims office. Keep one date-stamped copy as a potential claim. Forward one date-stamped copy of the claim to the U.S. Army Claims Service Europe (USACSEUR). This may toll the applicable German statute of limitations. Additionally, many receiving state claims offices do not require claimants to demand a sum certain. All claims personnel must familiarize themselves with the applicable receiving state law and procedures governing SOFA claims.

(d) All foreign inhabitants who file claims against the United States that fall within the receiving State's responsibility, such as claims based on acts or omissions within the scope of U.S. Armed Forces members' or civilian employees' duties, must file the claim with the appropriate receiving State office. Those U.S. inhabitants whose claims would be otherwise cognizable under the Military Claims Act (subpart C of this part) and whom the receiving State deems proper claimants under the SOFA must also file with the receiving State.